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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

New York, N.Y.

4 v.

21 Cr. 430 (RA)

5 NILOUFAR BAHADORIFAR,

6 Defendant.

7 -----x

Sentencing

8 April 7, 2023

9 10:05 a.m.

10 Before:

11 HON. RONNIE ABRAMS,

12 District Judge

13
14 APPEARANCES

15 DAMIAN WILLIAMS

16 United States Attorney for the
Southern District of New York

17 BY: JACOB H. GUTWILLIG

MATTHEW HELLMAN

18 Assistant United States Attorneys

19 LAW OFFICES OF JEFFREY LICHTMAN

20 Attorneys for Defendant

21 BY: JEFFREY H. LICHTMAN

22 JEFFREY B. EINHORN

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(Case called)

THE DEPUTY CLERK: Counsel, please state your name for the record.

MR. GUTWILLIG: Good morning, your Honor. Jacob Gutwillig for the government. I'm joined at counsel table by my colleague AUSA Matthew Hellman.

THE COURT: Good morning to both of you.

MR. LICHTMAN: Jeffrey Lichtman and Jeffrey Einhorn for defendant Niloufar Bahadorifar.

THE COURT: Good morning to all of you, as well.

So this matter is on for sentencing. Ms. Bahadorifar pled guilty in December to conspiring to violate International Emergency Economic Powers Act, the IEEPA, as we call it, in violation of 50 United States Code 1701 and structuring in violation of 31 United States Code 5324.

So in connection with today's proceeding, I have reviewed all of the numerous letters submitted by the parties, some with attachments, all of which I have read as well, together with a presentence investigation report dated March 7 of this year.

Why don't we begin by discussing the presentence report prepared by the probation department. Counsel, have you reviewed the presentence report and discussed it with your client? Let me start with defense counsel, please.

MR. LICHTMAN: I have, your Honor.

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1 THE COURT: And do you have any objections to it?

2 MR. LICHTMAN: Judge, we have no objections but, you
3 know, there is the issue with regard to the sentencing
4 guidelines, and we would defer to the plea agreement.

5 THE COURT: Okay. All right. Understood. Thank you.
6 I was going ask if you wanted to be heard, but thank you for
7 that.

8 Ms. Bahadorifar, have you had enough time and
9 opportunity to review the presentence report and discuss it
10 with your attorneys?

11 THE DEFENDANT: Yes.

12 THE COURT: Okay. Does the government have any
13 objections to the presentence report?

14 MR. GUTWILLIG: Not beyond those with respect to the
15 guidelines calculation, your Honor.

16 THE COURT: Okay. All right. All right. So the
17 Court adopts the factual findings in the report. The
18 presentence report will be made a part of the record in this
19 matter and placed under seal. If an appeal is taken, counsel
20 on appeal may have access to the sealed report without further
21 application to the Court.

22 So, Ms. Bahadorifar, when you pled guilty in
23 December, we discussed the federal sentencing guidelines. And
24 for those who are here and are not aware, the guidelines are,
25 you know, in a book like this. They are a set of rules. They

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1 are published by the United States Sentencing Commission, and
2 they are designed to guide judges when they impose sentence.
3 At one time they were mandatory, meaning judges were required
4 to follow the guidelines, but they are no longer mandatory,
5 they are no longer binding on judges, but judges must
6 nonetheless consider them and calculate them properly.

7 So while the parties stipulated to a guidelines range
8 of 46 to 57 months, the probation department found that the
9 applicable range should instead be 37 to 46 months. The
10 difference in the ranges turns on whether Counts Two and Five
11 should be grouped or not. The probation department found that
12 they should be, stating that, pursuant to Section 3D1.2, they
13 involve the same victim, namely, society at large, and two or
14 more acts or transactions that are connected by a common
15 criminal objective constituting part of a common scheme or
16 plan.

17 It seems like defense counsel doesn't want to be heard
18 on this. Would the government like to be heard on this issue
19 further?

20 MR. GUTWILLIG: Your Honor, the government is happy
21 to rest on its papers unless there are any specific questions
22 we can address.

23 THE COURT: I don't think so, thanks.

24 So Section 2M5.1, the guideline applicable to Count
25 Two, is not specifically listed as a guideline to be grouped

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1 under 3D1.2, nor is it listed as a guideline to be excluded
2 from the grouping analysis.

3 But 3D1.2 provides that for multiple counts of
4 offenses that are not listed, grouping under this subsection
5 may or may not be appropriate and that a case-by-case
6 determination must be made based on facts in the applicable
7 guidelines.

8 The application note 2 addresses the use of the term
9 "victim" in the guideline and reads, "For offenses in which
10 there are no identifiable victims, e.g., drug or immigration
11 offenses, where society at large is the victim, the 'victim'
12 for purposes of subsection (b) is the societal interest that's
13 harmed."

14 And the introductory commentary to part 3D of the
15 guidelines makes clear that it is specifically designed to
16 provide incremental punishment for significant additional
17 conduct while preventing multiple punishment for substantially
18 identical conduct.

19 So ultimately I agree with the government that the
20 societal harms caused by violations of IEEPA and the
21 structuring laws are different and the criminal conduct
22 involved is not substantially identical. The language in
23 50 United States Code 1701(a) makes clear that IEEPA relates
24 to unusual and extraordinary threats which have their source in
25 whole or in part outside the United States to the national

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1 security, foreign policy, or economy of the United States.
2 You know, in *United States v. Hashimi*, 2009 WL 4042841,
3 Judge Preska collected a history of executive actions taken
4 under the authority of IEEPA, including President Clinton
5 adding Osama Bin Laden and al Qaeda to the list of specially
6 designated terrorists. And as the Second Circuit observed in
7 the *Banki* case, pursuant to IEEPA, the Iranian transactions
8 and sanctions regulations were specifically adopted to target
9 the Iranian government's proliferation of weapons of mass
10 destruction, state-sponsored terrorist activity, and efforts
11 to frustrate Middle East diplomacy.

12 The structuring laws, by contrast, are principally
13 focused on transparency in the financial system and are
14 designed to fulfill multiple distinct goals. And as far back
15 as 1979, for instance, the Second Circuit described the
16 structuring laws and noted that the reports or records
17 required by them will be useful not only for criminal purposes
18 but also in tax or regulatory investigations or proceedings
19 and that such nonprosecutorial interests accounted for by the
20 laws were substantial. Indeed, Congress specifically codified
21 a declaration of purpose for passing reporting requirements in
22 the structuring laws at 31 United States Code 5311, and there
23 it noted that it enacted the structuring laws to require
24 records that could, among other things, prevent the laundering
25 of money, be used for regulatory investigations, and aid in

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1 combating tax evasion and fraud risks to American financial
2 institutions.

3 So for all of those reasons, I find that, given the
4 facts of these offenses and the distinct statutory purposes of
5 IEEPA and the structuring laws, that the parties are correct
6 in not grouping Counts Two and Five.

7 So I accept the guidelines calculation in the plea
8 agreement and I accept the guidelines calculation in the
9 presentence report except for the grouping analysis. As a
10 result, Ms. Bahadorifar's offense level after, among other
11 things, factoring in acceptance points and a minor role
12 reduction, is 23, her criminal history category is I, and her
13 recommended guidelines sentence is 46 to 57 months. So that's
14 consistent with the plea agreement.

15 As I said a moment ago, that range is only advisory,
16 so courts may impose a sentence outside of that range based on
17 one of two legal concepts—a departure or a variance. A
18 departure allows for a sentence outside of the advisory range
19 based on some provision in the guidelines themselves. I
20 understand that in the plea agreement the parties agreed that
21 neither party could seek a departure. Is that correct?

22 MR. GUTWILLIG: That's correct, your Honor.

23 MR. LICHTMAN: Yes, your Honor.

24 THE COURT: Okay. Nevertheless, I have considered
25 whether there is an appropriate basis for departure from the

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1 advisory guidelines range and, while recognizing that I have
2 the authority to depart, I don't find any grounds warranting a
3 departure under the guidelines.

4 I also, of course, have the power to impose what we
5 call a variance pursuant to 18 U.S.C. § 3553(a), and I know
6 that that is what the defense is seeking.

7 So with that said, would the government like to be
8 heard today with respect to sentencing?

9 MR. GUTWILLIG: Yes, your Honor.

10 Your Honor, we are here today because Niloufar
11 Bahadorifar knowingly violated sanctions. Those sanctions are
12 designed to prevent hostile foreign governments, like Iran,
13 from carrying out its missions of terror and human rights
14 abuses across the globe, from stamping out dissent and
15 silencing criticism and trying to do that right here in New
16 York City.

17 Those sanctions are a bulwark against malign foreign
18 actors and influence, and the defendant violated them. For
19 years, she accepted money from Mahmoud Khazein, who she knew
20 was affiliated with Iranian intelligence, and she acted on his
21 behalf. She provided invaluable access, opening the door to
22 the U.S. financial system so that the Iranian intelligence
23 community could walk right through. And on June 17, 2020, at
24 Khazein's direction, and in coordination with their
25 coconspirator Omid Noori, she sent a \$670 payment to a private

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investigator. That payment note read: "Requested from Mr. M. Khazein."

Now, as the Court knows, that payment was for the private investigator to conduct surveillance of the victim in this case, Masih Alinejad. She is here in court today. Ms. Alinejad is a prominent critic of the Iranian regime and she has spoken out against its human rights abuses, compulsory hijab laws, suppression of democratic participation expression, and the use of arbitrary imprisonment, torture, and execution to target its political opponents. And for that bravery she has paid a price. She was, as charged in the indictment, the target of a kidnapping plot undertaken by Khazein, Noori, and their coconspirators, Kiya Sadeghi and Alireza Shahvaroghi Farahani. And you will hear today from Ms. Alinejad about the effect that that kidnapping plot had on her and her family. She will describe it in a way that I can't.

Let me be clear. The defendant is not charged in that kidnapping conspiracy and the government does not allege that she had specific knowledge of its aims. The defendant's conduct is, instead, an object lesson in why sanctions violations are gravely serious. Under the International Emergency Economic Powers Act, or IEEPA, the president has the authority to declare a national emergency with respect to unusual and extraordinary threats to this nation's national

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1 security, foreign policy, and economy when those threats have
2 their source in whole or in substantial part outside of the
3 United States. The government of Iran was identified as such
4 a threat in 1979 when the current regime came to power,
5 seizing the United States embassy in Tehran and holding more
6 than 50 Americans hostage for over a year.

7 The current sanctions regime came into effect in 1995
8 when the president declared a national emergency in response
9 to the government of Iran's support of terrorism, among other
10 things. And since that time, each successive U.S. president
11 has found that the government of Iran's actions continue to
12 pose an unusual, extraordinary threat. That is what IEEPA
13 is—a national emergency posed by the government of Iran that
14 has persisted for more than a quarter of a century. That is
15 the law the defendant broke.

16 She may not have known about the kidnapping
17 conspiracy, but the defendant new very well that she was
18 supporting, assisting, and facilitating the actions of Iranian
19 intelligence assets for years before that plot came to
20 fruition.

21 Beginning in at least 2014, the defendant received
22 regular payments from Iran from Khazein. Those payments were
23 made through a variety of deceptive and secretive means, and
24 the defendant held up her end of the bargain in exchange. She
25 gave Khazein credit cards, access to the U.S. financial

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1 system, maintained bank accounts, and made payments through
2 U.S. payment facilities. She facilitated import of
3 commodities to Iran, bought computer tools for him, and
4 offered to act as a straw owner of businesses in the
5 United States on his behalf. So even if she never made the
6 payment to the investigator and the kidnapping conspiracy
7 never took place, we would be left with someone who
8 repeatedly, willfully and, to put a fine point on it,
9 dangerously violated sanctions.

10 Violating sanctions may sound like some sort of
11 technicality. It is not. In plain English, for years, the
12 defendant knowingly supported an intelligence asset of a
13 hostile foreign nation that the United States has deemed a
14 sponsor of global terror.

15 When she was arrested, the defendant initially lied
16 about knowing Khazein and pretended not to recall his name.
17 She later admitted that in fact she had known him for years
18 and understood him to be connected to Iranian intelligence and
19 she admitted that in August of 2020, less that be a year
20 before the kidnapping plot came to light, they met in
21 Khazein's office in Tehran.

22 The government has not and does not allege that the
23 defendant had specific knowledge of the kidnapping plot, but
24 to be crystal clear, there is no dispute that she knew exactly
25 who she was helping. She is no unwitting participant in her

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1 years-long, repeated, and flagrant violation of the sanctions
2 laws.

3 That is also far from her only crime. The defendant
4 also was charged with bank and wire fraud, money laundering,
5 and structuring, the last of which she was convicted. She
6 amassed significant unexplained wealth and made concerted
7 efforts to hide that wealth through structured deposits.
8 Between approximately July of 2020 and May of 2021, she made
9 over a hundred cash deposits totaling nearly half a million
10 dollars.

11 Structuring, like IEEPA, may sound like a sanitized
12 technical term, but here's the point. More than a hundred
13 times the defendant willingly, knowingly, and obviously broke
14 the law when she thought no one was looking, and she amassed
15 significant wealth that remains unexplained.

16 The government took all this into account when
17 fashioning an appropriate plea offer. The defendant was not
18 required to plead to bank and wire fraud, decreasing her
19 maximum sentencing exposure from 30 years to 20 years. And
20 the government recognized, through mitigating role adjustment,
21 her relatively less culpable role in committing the IEEPA
22 violation. The resulting guidelines range of 46 to 57 months'
23 imprisonment reflects that considered judgment and it reflects
24 the seriousness of the crime here.

25 A guidelines sentence is appropriate in this case and

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1 it's appropriate because it reflects the seriousness of the
2 defendant's offenses, it provides just punishment, and it
3 sends a message of general deterrence that assisting malign
4 foreign governments can have devastating consequences,
5 including for those targeted by hostile regimes for
6 retribution, people like Masih Alinejad, that those who
7 knowingly provide support and services to those governments,
8 like Iran, will be held to account for their vital role in
9 exporting terror, violence, and repression to the
10 United States, that we will not allow it.

11 Your Honor, for all of those reasons, the government
12 respectfully submits that a guidelines sentence of 46 to 57
13 months' imprisonment is appropriate and necessary in this
14 case.

15 THE COURT: Thank you.

16 So would Ms. Alinejad like to speak today?

17 MR. GUTWILLIG: Yes, your Honor.

18 THE COURT: You are welcome to come to the podium.

19 MS. ALINEJAD: Your Honor, thank you so much for
20 giving me this opportunity. Especially coming from a country
21 that women cannot be judge, I am very pleased.

22 My name is Masih Alinejad. I'm an Iran journalist,
23 American journalist, and activist. My statement is made to
24 highlight the impact of actions undertaken by or on behalf of
25 the Islamic Republic.

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1 I was the target of kidnapping plot that was foiled
2 by the F.B.I., but I am not the only victim here—my husband,
3 Kambiz Foroohar, and my two stepchildren.

4 Physically, I survived. The ones who wanted to
5 kidnap and harm me failed. But the emotional and mental scars
6 and wounds are very, very real. I loved being in America. I
7 felt the safe place ever that I can express myself, when I
8 could enjoy the benefits of freedom of speech, to campaigning
9 for women inside Iran who don't have the freedom to express
10 themselves.

11 I'm a very strong woman, but they could break me
12 emotionally. They break -- they broke me emotionally. This
13 crime left its marks. I no longer feel safe in America. This
14 crime's left its mark, and every day when I walk out in the
15 streets, I have to watch over my shoulder. This crime hurts
16 emotionally, physically, and financially.

17 My life changed in 2020. That was when the F.B.I.
18 showed me the surveillance photos of myself, my husband, and
19 my two stepchildren. After that, we moved to a series of safe
20 houses. As a result of the plot, we lost our home where we
21 had lived for ten years and stayed in a series of temporary
22 accommodations. We have changed locations many times in the
23 three years. I can assure you that it is not fun living --
24 living out our -- living out of suitcases.

25 For months, I had troubles sleeping; and when I did,

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1 I used to have nightmares. Even to this day, there are times
2 when I wake up in the middle of the night not quite sure as to
3 where I am. I stay still trying to figure out whether I'm
4 back in Iran or still in the United States of America. Even
5 during the day, I sometimes confused the locations of my new
6 safe house.

7 Our changed circumstances has been traumatic for our
8 children, especially my teenage stepson who is only 16 year
9 old. He spent little time with us. It has been difficult to
10 create a normal home life during the past three years.

11 Spring is here now, and this is the most difficult
12 part of my life because I really miss the life that I had
13 before this plot. I miss my tree-lined streets in my little
14 corner of Brooklyn and I miss my neighbors who accepted me as
15 one of their own. Every morning, I used to wake up and run
16 down the stairs to drink my coffee in my beautiful garden with
17 my daffodils, my roses, lilies. Yes, I grewed roses and I
18 planted sunflowers that climbed more than seven feet tall.
19 You have to visit my garden.

20 The Islamic Republic forced me to leave my family in
21 Iran. To remind myself what I had lost, I had planted trees
22 and I named them after my mother, after my father, after my
23 brothers. They are beautiful trees about the members of my
24 family in my garden. Now I have been forced to leave my
25 family once again.

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1 Beside the emotional pain, which is difficult, there
2 is also financial cost. We are forced to put our home up for
3 sale. We have already given most of our furniture to charity.

4 The hardship will not deter me from my mission at
5 all. The Islamic Republic wanted to silence me, but they have
6 failed. Thanks to the law enforcement and their incredible
7 job, I'm louder than ever.

8 Islamic Republic is a brutal and repressive regime
9 that kidnaps, tortures, and murders dissidents. The regime
10 has killed thousands of Iranians, innocent protesters at home
11 and hundreds of dissidents outside its borders. Many women
12 received lashes, being raped in prison, and my crime is just
13 giving voice to them. It is beyond belief for
14 anyone—anyone—to claim that they were unaware of the evil
15 nature of the Islamic Republic.

16 I want this Court to impose the maximum sentence not
17 for my pain, not the pain that I have suffered, not the pain
18 that my family suffered, but to send a signal, a message that
19 you cannot commit acts of terrorism or fund act of terrorism on
20 U.S. soil. I want New York be safe again for me. I want to
21 go back to my neighbors.

22 Thank you so much for giving me the opportunity to
23 express myself.

24 THE COURT: Thank you so much for being here today.

25 MS. ALINEJAD: Thank you.

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1 THE COURT: Mr. Lichtman, would you like to be heard?

2 MR. LICHTMAN: Yes, Judge.

3 Your Honor, this is a very unusual case and a very
4 unusual defendant for a variety of reasons.

5 First, it is very rare that we have a case in which
6 the harm or the potential harm in this case, although as
7 Ms. Alinejad noted, this is real harm even if the plot failed.
8 This evil plot, my client, Ms. Bahadorifar, is now the face of
9 it in America, is now the face of it in this courtroom, and
10 she wasn't convicted of that plot. And it is so rare to have
11 a situation where this is the tail that's wagging the dog to
12 the extreme. If the other defendants that are safely
13 ensconced in Iran right now were in this courtroom being
14 sentenced, she is a minor part of it. She wasn't convicted.
15 She wasn't even charged. But here we are, and it's human
16 nature to direct the ire at the one person that's left, that
17 was able to be punished.

18 I want to note also that where this defendant came
19 from, what she's been through as a person, what she's
20 experienced to get here today, it's affected her behavior that
21 landed her here. This isn't somebody who grew up in a bad
22 neighborhood in New York, where people were selling drugs and
23 she's got PTSD. This is someone who grew up in a way that is
24 different than -- I don't know if there is any defendant that
25 I have represented -- I have been doing this now for almost 33

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1 years, and this is just an incredibly unusual case.

2 She was shaped by the Iranian terror regime that took
3 over, that overthrew the country when she was five years old.
4 The country went from a secular, modern, beautiful place to a
5 dark, repressive, evil, murderous terror regime overnight;
6 where one day girls are walking around wearing skirts,
7 listening to music, and the next day if they show an ankle in
8 public, they are beaten by a morality police. It is
9 incredible, but it's true. And I don't know that Americans
10 really appreciate how diseased this Iranian terror regime is
11 and what they have done to the people that they have
12 imprisoned.

13 So when she was five years old, her entire life
14 changed and she grew up under that repressive regime. As she
15 said in her presentence interview, in her culture, you just
16 take what the men do and you don't report anything. And it
17 sounds like an excuse but it's not.

18 When she was beaten by her fundamentalist husband in
19 Canada, an arranged marriage, she didn't go to the police.
20 Why? She is in Canada. She is free. She wasn't in Iran
21 anymore. She didn't do a thing. She was lucky to escape with
22 her life with her son. That's because of where she grew up and
23 the impression that she had from the horrifying experience of
24 growing up as a young girl in Iran.

25 So I think trying to pigeonhole Ms. Bahadorifar as a

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1 typical American defendant is wrong and unfair. Her reactions
2 to authority, her responses to what people in power ask of her,
3 all of these things separate her from a typical American
4 defendant. And there is no excuse for breaking the law. I'm
5 not using that as an excuse, Judge. But her upbringing, the
6 factors that shaped her world view, are all pertinent pursuant
7 to Section 3553(a).

8 She's had a very difficult life, as I have said. To
9 watch this happen when you are a young child -- and it's
10 something Americans can't understand. You know, I view this
11 case, I'm somebody who personally knows a lot about this
12 society and I have studied it and it fascinates me. Why the
13 courtroom is not filled with international press about this
14 case tells me all I need to know about Americans just don't
15 have any interest or enough interest for whatever reason and
16 Americans should.

17 She talks about in the presentence report and in some
18 of the letters that were submitted about what happened to her
19 when she was ten years old and she went to a wedding, her
20 sister's wedding, I believe. It's incredible. There were
21 people that were together dancing, men and women. That
22 happens at every wedding. But what happened at the end of the
23 wedding, the morality police came in and arrested everybody
24 because you are not allowed to have men and women that aren't
25 married together in the same room and, God forbid, dancing.

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1 She was ten years old, taken to a police station and then
2 released. That's the kind of thing that shapes your world
3 view, and I don't know that you can ever escape from even when
4 you come to a free country, whether it's Canada or America.

5 We learned that her father brought her older sister
6 Azita to America to get educated because her father knew that
7 this was not the Iran that he grew up in. He knew that,
8 having three daughters, there was no chance that they could
9 ever prosper under that regime where there was no value at all
10 for women, none, just abuse.

11 Her father was rewarded for his concern for his
12 daughter by being arrested upon his return to Iran and all the
13 family's property was taken. Other relatives were imprisoned.
14 One of them was executed, an uncle, for talking against the
15 regime.

16 The defendant, as I said, finally escaped Iran and
17 moved to Canada. And as I had said, she didn't escape her
18 upbringing. She was into -- forced into an arranged marriage
19 and had to leave after being beaten and abused. She was told
20 that if she left the house uncovered she would be beaten.
21 This is in Canada. This is what she experienced. And again,
22 as she said, in her culture you just take what the men do and
23 you don't report anything.

24 Eventually she escaped and moved to America with her
25 young son, Yasha, after seeing him get abused by her husband

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1 as well. She had no money. She didn't speak the language
2 barely. It was a new country. She was raising a young boy on
3 her own without any help, without any relatives, with an
4 ex-husband who had nothing to do with her son.

5 Yasha, her son—you have read his letter, Judge—is
6 now 20 and somehow throughout all of this has turned out to be
7 a wonderful kid. I read the letter, and I would hope that my
8 children would speak about me in the same way as Yasha spoke
9 about his mother, who sacrificed so much to raise him. In his
10 letter to the Court, he described what a tremendous mother she
11 was. As I said, being a single mother in a strange country
12 with no money, no assistance from her ex, her family under
13 siege in Iran, well, that's something. And raising a son by
14 herself under these circumstances, without any kind of
15 upbringing that could prepare her for this new life, is really
16 extraordinary. The letter details their close relationship as
17 they really only have each other in this world. That's it
18 after all these years. Yasha will attend Penn State in the
19 fall and hopes to go to U.S.C. law school. He hopes to be --
20 he hopes to be a criminal defense attorney.

21 So we are to think that this woman—who by all
22 accounts is a good person, a generous person, who cares for
23 the homeless on the weekend—is somehow embedded with the
24 Iranian terror regime. She is not. The government surely
25 would have provided intelligence upon her if she was. It's

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1 not like the American government is not aware of who is in
2 their midst when they are coming from perhaps America's worst
3 enemy. They have files on all the people, Judge, especially
4 the expatriots from Iran.

5 Yes, she was involved with a bad person—no
6 question—this Mahmoud Khazein, who had known her for years
7 since she was a young woman, knew her family well before she
8 knew her -- knew him. Yes, she did what he asked of her.

9 He was not only an authority figure to her, and she's
10 known him for so long, he was also an important government
11 figure in Iran. He is part of Iranian -- Iran's terror
12 regime. There is no question. That's not disputed. He is
13 part of the Revolutionary Guard, Judge, and that's their
14 military wing of the Iranian government, and part of their
15 task is to crush any dissent within Iran. This is a very
16 scary terror leader in a country run by the most dangerous
17 terrorists on the planet. Khazein makes people disappear.

18 But there is zero evidence that Nellie had any clue
19 about this kidnapping plot of Ms. Alinejad, a woman whose
20 hatred of the Iranian terror regime is completely founded. We
21 should all feel the same way about Iran as Ms. Alinejad does.
22 She is a hero for getting it all out. Well, she is a victim,
23 as well. I'm not saying that they are the same, but there is
24 a reason why she is in California. There is a reason why there
25 is an entire community of ex-Iranians there—to escape the

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1 terror regime.

2 Did she do things, Nellie, for financial need for
3 this man? As noted in the government's submission on page 8,
4 in 2014, Nellie inquired about money she was supposed to
5 receive from family members in Iran and from Khazein. This
6 was just a bit after she fled her ex-husband in Canada.

7 Regarding Khazein, did she feel morally obligated to
8 help this older authority figure? was she afraid not to help
9 him? I suppose a combination of all. I don't know that we
10 are ever going to get the answer. I don't know that we as
11 Americans can fully understand her motivation. But, Judge, I
12 also can't understand as an American why a 19-year-old who
13 finally escaped Iran would enter into an arranged marriage
14 with a fundamentalist lunatic abusive husband. I can't
15 understand that either. But this is what happens when you
16 grow up in Iran. It's not so easy to shed all of the bad.

17 She did know that she had family back in Iran who
18 were exposed when all of this was going on. And the
19 government knows full well -- and I can tell you this, Judge,
20 I don't want there to even be a hint that I have any problems
21 with the government's handling of this case. These two
22 prosecutors couldn't have been more fair, more patient, and
23 more decent throughout this entire episode, couldn't be. They
24 were perfect representatives of this office. But as I said,
25 the government knew that she didn't have a thing to do with

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1 the horrible kidnapping plot. They read every one of her
2 thoughts in her texts and her What's App messages or e-mails,
3 nothing about the kidnapping.

4 She made a payment of \$670 by PayPal to the private
5 investigator and put Mr. Khazein's name in the memo, Judge.
6 He was a known quantity to the U.S. government at that point
7 as a member of the IRGC and she put his name in the PayPal
8 payment memo. She clearly knew nothing of the plot, and she
9 didn't even attempt to hide his name on the memo. That speaks
10 volumes.

11 And why was Nellie chosen by Khazein? Because he
12 felt he could manipulate her. That's why. He felt he could
13 get her to do his bidding unknowing what he was actually
14 doing. If he was dealing with someone who was ideologically
15 aligned with him, Judge, with the Iranian terror regime, he
16 would have included her in on the plot. He didn't. He never
17 did.

18 THE COURT: Don't I have to send a message to people
19 just like Ms. Bahadorifar, who can be manipulated, to say this
20 is what's going to happen?

21 MR. LICHTMAN: Judge, I'm going to tell you what the
22 message is that may have already been sent, regardless of what
23 happens today, that doesn't happen to a defendant in a regular
24 case. This woman, who was living in a close-knit expat
25 community in Iran [sic] is marked. Why? Because everybody in

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1 her community thinks she is aligned with the Iranian terror
2 regime. In her building, where she lived with friends, they
3 are all Iranian. This is what they do. They went to be with
4 each other because they understand each other and they all
5 experienced the same up bringing. Now she is mud. Her
6 picture is put up in the elevator. Most of the people won't
7 speak to her. She was fired from her job. That's the first
8 part. Where can she go? Is she going to move to Kansas City?
9 Is she going to move as if she is in the witness protection
10 program? No. No. She can't. She's got roots there, and now
11 she is hated there, even though she herself was manipulated by
12 Khazein and is an opponent of that regime, which is why she got
13 out. That's part one.

14 Part two, well, she is marked by the Iranian terror
15 regime as well. You have read our papers, Judge. You know
16 what they are. You know what they are capable of. You know
17 what they have done. There is nothing beneath this diseased
18 terror regime. And the idea that she is somehow not in danger
19 herself, or her family, from these people is ludicrous to
20 suggest otherwise.

21 So has a message been sent? She's got a felony
22 conviction. She is hated by both sides of the equation here
23 and she was manipulated. There is no question. Period. And
24 as I said, she finds herself in a world of trouble. She is
25 the only defendant who will ever appear before an American

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1 judge in this case. The others are carefully hidden and
2 protected in Iran. They are not feeling any pain today. And
3 the one person who was not charged with the plot is here to
4 take the brunt of it.

5 This is a terror regime, Judge, and I know I have
6 gone on about it, but she has family that's stuck in Iran
7 right now, exposed. This is a regime that has killed,
8 tortured and imprisoned so many innocent Iranians just in the
9 past few months because a 22-year-old Kurdish Iranian woman
10 named Mahsa Amini dared to wear a loose head covering in
11 public, and for that she needed to be beaten to death by
12 Iran's morality police.

13 Since then, they have had protests in the streets
14 there and the world has watched in horror at the brutal
15 tactics employed to crush it—murder, arrests with no trials,
16 torture, rape, electrocution, removal of nails. If you simply
17 dance in the street in Iran, you are attacked by the morality
18 police.

19 And you would think that by now that they would want
20 to reach some sort of accommodation with the people that are
21 uprising. No. Last week Iran's chief justice warned that
22 women who did not cover their heads in public will be punished
23 and prosecuted without mercy. This evil regime has taken to
24 poisoning young school girls to prevent them from protesting.
25 Thousands have been poisoned already.

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1 The government wrote in its letter that Congress
2 recently enumerated over a dozen alleged plots by the
3 government of Iran over recent years to bomb, shoot, kidnap,
4 harass, and gather intelligence against victims in the
5 United States, Canada, the U.K., France, Germany, Denmark,
6 Turkey, and Africa. Judge, that's a fraction.

7 How about the last 24 hours? We've got Iran paying
8 terrorists in Lebanon. They have killed the prime minister.
9 They bankrupted the country. They are shooting rockets into
10 Israel. We have got Iran's Hamas terrorists below Israel
11 shooting rockets into Israel. I read that there was a plot of
12 two Iranian operatives who were arrested in Azerbaijan
13 yesterday for trying to overthrow the government. Why? They
14 want to install a Shi'a government. This is how utterly sick
15 this is.

16 The day that I filed our sentencing letter, there was
17 an arrest of Iranian operatives who were about to target a
18 Jewish center in Greece, in Athens, in a crowded area, not an
19 Israeli target. This wasn't an issue with politics. They are
20 anti-Semites and they wanted to kill Jews in Greece.

21 Similarly, they have a cartoon contest every year
22 about the Holocaust and the best one that says that the
23 Holocaust didn't occur, well, that's your big winner. That's
24 what we have with Iran.

25 There is nothing that deters this terror

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1 regime—nothing. So that's the message -- and I went on about
2 it, but that's the message that she faces as well. When this
3 is over, Judge, whatever your Honor does, it doesn't end it
4 for her. It doesn't end it for her. It doesn't end it for
5 her in America, it doesn't end it for her anywhere. It
6 doesn't end it for her with her expats and it doesn't end it
7 for her with the people that are coming into this country to
8 kill and kidnap.

9 During the pendency of this case they tried to kill
10 Ms. Alinejad again. A man was arrested with an AK-47 who was
11 at her front door during the pendency of this case. That
12 shows they don't have any concern. They tried to kill Mike
13 Pompeo and John Bolton. They have no concern at all. They are
14 certainly not going to be deterred from going after the
15 defendant.

16 And when the government reports the defendant
17 initially lied to law enforcement officers who arrested her
18 about her relationship with Mahmoud Khazain, should that be
19 any surprise, an Iranian woman afraid to admit any
20 relationship with a member of the Revolutionary Guard when she
21 has family back trapped in Iran?

22 And I'm going to come to the end, Judge. If we can
23 get past the politics and the need to send a message, I get
24 all of that. I think that's one thing that we can all agree
25 upon in this courtroom is that somebody, somehow there has to

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1 be a message sent to this terror regime. I would ask you to
2 look at her life, Ms. Bahadorifar, when no one was watching,
3 when she had no need to impress the Court or anyone, for that
4 matter. This is a person who gives back to her community.

5 I have got clients, Judge, they get arrested, they
6 are incredibly wealthy, and they say to me the first time we
7 had a meeting in my office, well, who could I write a check to
8 to show that I am a charitable person for a judge down the
9 line? It happens, like, I don't know, like 80 percent of the
10 time.

11 She doesn't have any money. What she did is, by her
12 sweat equity, she is helping the homeless, she is feeding them
13 on weekends. There is no matter, no situation too small for
14 her not to try to help her friends, her community. She
15 listens. She acts. The letters are legion in that regard,
16 legion in her charity.

17 And this is why she is so ashamed to be here today,
18 because she loves America. She didn't come here as an
19 operative. She came here to raise her son in freedom. We
20 forget about that because she is here as a criminal defendant.
21 This is a horrible ironic tragedy for her.

22 In conclusion, it is an unusual case for all the
23 reasons I have said. She is the face of the Iranian terror
24 regime that she had no part of in this courtroom today. As I
25 said and you know, she wasn't charged with that horrible part

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1 of the case. She was misled, lied to by a long-time family
2 friend, the scary authority figure who is in the Iranian
3 Revolutionary Guard. But she stills committed the crimes.
4 She should have known better. Could she ever have imagined
5 that she was getting herself involved in this? Of course not.
6 She would have been charged. And she is mortified by what she
7 did.

8 And after such a difficult life, Judge, from an awful
9 childhood, growing up, first, in this idyllic country, and then
10 by age five her world turned upside-down when the revolution
11 occurred. Suddenly, she is a second class citizen in an
12 Islamic terror state. She finally escaped, only to find
13 herself in another prison in Canada with a fundamentalist
14 abuser. When she finally escaped and moved to America, a
15 country that gave her peace and freedom, against all odds she
16 raised, on her own, a wonderful son without speaking the
17 language well, but she persevered.

18 But, sadly, the damage of her upbringing was done,
19 caused her to be manipulated by an authority figure who was a
20 powerful member of Iran's terror regime government. But she
21 knew better. America gave her so much, and she knew better.

22 And now she is going to pay the price for this, for
23 her actions for the rest of her life, Judge. She will always
24 have people -- she will always have to look over her shoulder
25 from both sides of this equation. She will have difficulty

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1 ever working again here, certainly not in her area where she
2 lives. She still must raise a son who relies -- raise a son
3 who relies on her completely.

4 For all these reasons, Judge -- and I know that it is
5 a difficult decision for you. I don't envy me. When I walked
6 in this morning, I was feeling bad, I was feeling bad for
7 myself because this is --

8 THE COURT: Speak into the mic please so we can all
9 hear you.

10 MR. LICHTMAN: -- because this is a case that tears
11 at me personally, as well. It's something that I have a
12 passion about, and it's very hard to be here and it's very
13 hard to represent a woman who I feel it's so easy to make her
14 bear the brunt of what occurred here, and she is the only one
15 that ever will, and she is by far the least involved and was
16 wasn't charged in the main crime.

17 For all those reasons, Judge, I know that it is not
18 easy for you, but I beg of you to give her another chance, to
19 give her a probationary sentence with home confinement with as
20 much community service, to speak to other people, whatever
21 your Honor can do. I don't want to break up this small family,
22 what's left of it.

23 Thank you, Judge.

24 THE COURT: Thank you.

25 Ms. Bahadorifar, would you like to say something

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1 today?

2 THE DEFENDANT: Yes.

3 THE COURT: Bring the microphone a little closer,
4 please, so we can all hear you.

5 THE DEFENDANT: Your Honor, I would like to sincerely
6 apologize to this beautiful country, the Honorable Court, the
7 prosecutor, to my fiancé Salman, as well as my son Yasha and
8 my sister and the brave people of Iran. I'm deeply sorry that
9 my crime brought so much discomfort into their lives. To
10 Ms. Alinejad, I'm humiliated to have been involved in any
11 attempt to harm you, even I was unaware of it. You are a hero
12 to all Iranian, and especially me and my family. I'm deeply
13 sorry. I'm sorry.

14 I moved to United States from Iran to finally
15 experience freedom and happiness and finally have a better
16 life. The United States has provide me with freedom I had
17 never experienced in Iran. The United States is the country
18 that does so much for their people and that is why I am beyond
19 ashamed for doing this to my new home which has done nothing
20 but support me, keep me safe, provide me with equal rights as
21 everyone else. Again, these are all things that everyone in
22 Iran would dream of having it. I promise to never, ever let
23 this country down in any way again.

24 And to Yasha my son, we have been through so much
25 together. We have overcome so much. I never wanted to let

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1 you down, and now I have. I am so sorry. Please forgive me.

2 Thank you, your Honor.

3 THE COURT: Thank you.

4 Is there any reason that sentence cannot be imposed
5 at this time?

6 MR. GUTWILLIG: No, your Honor.

7 MR. LICHTMAN: No, your Honor.

8 THE COURT: All right. So I'm required to consider
9 the advisory guidelines range as well as various other factors
10 that are outlined in a provision of the law that I mentioned
11 earlier—it's 18 United States Code § 3553(a)—and I have done
12 so. Those factors include, but are not limited to, the nature
13 and circumstances of the offense and the personal history and
14 characteristics of the defendant, because each defendant must
15 be considered individually as a person.

16 Judges are also required to consider the need for the
17 sentence imposed to reflect the seriousness of the offense,
18 promote respect for the law, provide just punishment for the
19 offense, afford adequate deterrence to criminal conduct,
20 protect the public from future crimes of the defendant, and
21 avoid unwarranted sentencing disparities, among other things.

22 You know, sentencing is the hardest thing that a
23 judge does. It is immeasurably difficult for a human being to
24 judge another human being and decide if they should be
25 deprived of their liberty and, if so, for how long.

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1 This sentencing is particularly difficult in my view
2 because I have before me a woman who is sympathetic in many
3 respects. She has no criminal history. She is beloved by
4 friends and family, and she has faced many serious challenges
5 in her life. But she has also engaged in criminal conduct
6 that is not only egregious in and of itself, but conduct
7 through which she endangered the life of another woman, a
8 woman who, in contrast to Ms. Bahadorifar, is a profile of
9 courage in the face of the Iranian terror regime.

10 I think the Probation Department put it so well in
11 the presentence report when it said that almost all organized
12 criminal activity depends on individuals like Bahadorifar,
13 people with clean criminal records and unassuming backgrounds
14 who are unlikely to attract attention. These individuals
15 provide access to the U.S. financial system to bad actors.
16 They obfuscate the source of money and allow it to be
17 transferred for nefarious purposes—in this case, sanctions
18 evasion and a kidnapping plot.

19 The purpose of the United States's sanctions on Iran
20 is to put economic and political pressure to achieve a
21 peaceful desired outcome, namely, preventing Iran's
22 proliferation of nuclear weapons and stopping their continued
23 support for terrorist groups throughout the Middle East
24 without having to go to war. If Iran can avoid these
25 sanctions, as they are trying to do with the help of people

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1 like Bahadorifar, then sanctions will be ineffective and the
2 risk of war increases.

3 The kidnapping plot on American soil is an affront to
4 our national sovereignty, the values of democracy, and the
5 rule of law. Bahadorifar played a relatively small role in
6 all this and yet her contribution was crucial.

7 Here, Ms. Bahadorifar had known the Iranian
8 intelligence actor for years and understood him to be
9 affiliated with Iranian intelligence services. Indeed, she
10 met with him in Tehran in August 2020 when he was engaged in
11 the plot to kidnap, even though she didn't know about that
12 plot. But nonetheless, knowing what she did, what
13 Ms. Bahadorifar knew, she still provided an attempt to provide
14 this man assistance for a full nine-year period, from 2012 to
15 2021.

16 Moreover, the amount of funds involved in the
17 structuring charge is close to half a million dollars. In
18 just the two-year period between 2019 and 2021, much of that
19 time at the height of the pandemic lockdown, the defendant
20 made over 100 separate trips to make cash deposits at banks
21 specifically intended to evade reporting requirements. Those
22 102 deposits totaled well over \$400,000 in illicit funds.

23 And she profited from this scheme. When the F.B.I.
24 searched her home, they found about \$150,000 in luxury goods,
25 including watches and handbags and jewelry. So not only does

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1 a sentence in this case have to reflect the seriousness of the
2 offenses, but I have to send a strong message to deter other
3 people like Ms. Bahadorifar from engaging in conduct like this
4 and hopefully prevent dangers like those that befell
5 Ms. Alinejad who has been so brave not only in coming here
6 today but in speaking up against injustice in her homeland.

7 So while I have considered all of the arguments made
8 by Ms. Bahadorifar, including but not limited to her lack of
9 criminal history and her health issues, and I read every one
10 of the many letters submitted by her friends and her family
11 who describe her in glowing terms, and while I am fully
12 cognizant that there is no evidence that she knowingly
13 participated in the kidnapping plot, a very serious sentence
14 must nonetheless be imposed, and I ultimately agree with the
15 government that one within the guidelines range is
16 appropriate.

17 Ms. Bahadorifar, could you please rise for the
18 imposition of sentence.

19 It is the judgment of this Court that you be
20 committed to the custody of the Bureau of Prisons for a term
21 of 48 months on each count to run concurrently, to be followed
22 by a term of supervised release of three years on each count
23 also to run concurrently.

24 I believe that this four-year sentence is sufficient
25 but not greater than necessary to comply with the purposes of

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1 sentencing set forth in the law. And just to be clear, you
2 know, based on the facts before me, I would have imposed the
3 same sentence however I ruled on the guidelines issue that we
4 discussed earlier.

5 You can be seated while I describe the conditions of
6 your supervised release.

7 So all of the standard conditions of supervised
8 release shall apply. They are on pages 25 through 27 of the
9 presentence report. Counsel, would you like me to read
10 these aloud or do you waive their public reading?

11 MR. LICHTMAN: Judge, we waive the public reading.

12 THE COURT: I will say the mandatory conditions on
13 the record.

14 You must not commit another federal, state, or local
15 crime.

16 You must not unlawfully possess a controlled
17 substance. You must refrain from any unlawful use of a
18 controlled substance.

19 You must cooperate in the collection of DNA as
20 directed by the probation officer, and you must make
21 restitution in accordance with the law.

22 In light of the nature of the crime, I'm also taking
23 the recommendation of the probation department and requiring
24 you to provide the probation officer with access to any
25 requested financial information, and you must not incur any

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1 new credit card charges or open additional lines of credit
2 without the approval of the probation officer unless you are
3 in compliance with the installment payment schedule.

4 I am not going to impose a fine at the recommendation
5 of the probation department and in light of the amount of
6 forfeiture that I intend to order.

7 I am imposing the special mandatory special
8 assessment of \$200, which shall be paid immediately.

9 So a consent preliminary order of forfeiture money
10 judgment was issued on December 15, 2022 in the amount of
11 \$476,100. That order will become part of the judgment in this
12 case.

13 Is the government separately seeking restitution?

14 MR. GUTWILLIG: No, your Honor.

15 THE COURT: All right. So none will be imposed.

16 Is there any objection to voluntary surrender?

17 MR. GUTWILLIG: Your Honor, the government's position
18 is that remand is appropriate under the applicable standard.
19 I don't think that the defendant can meet her burden to
20 establish that she is not by clear and convincing evidence a
21 flight risk. I think this is because, among other things, the
22 nature and circumstances of this offense, the amount of money,
23 the illicit payments, the deceptive means used for that, and I
24 think that the distinguishing factor between today and when
25 she pled guilty is that your Honor has just imposed a

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1 significant sentence that incentivizes flight.

2 THE COURT: Counsel, would you like to be heard?

3 MR. LICHTMAN: Judge, we have known about these
4 sentencing guidelines for a long time now. The idea that she
5 is a flight risk is ludicrous. She could have left any time
6 beforehand. It would be a lot easier for her to have left
7 before she even pled guilty in this case.

8 She followed every single directive from Pretrial
9 Services. There was not a single issue. So the idea of what
10 more could be clear and convincing evidence? This is beyond a
11 reasonable doubt evidence that she is no flight risk. She's
12 got family here. She's got a son who is in school who will be
13 going to school in the fall. The idea that she is going to
14 run away when she's got a four-year sentence and when you
15 factor in the 85 percent, the halfway house, and the First
16 Step Act credits, it's about 29 months in jail.

17 The idea that she is going to leave this country to
18 go where and leave her family is, frankly, a joke, and I would
19 ask that she be given 90 days to self-surrender—she's got a
20 son who is still in school, he is going to be transferring to
21 another school this fall—to give him an opportunity to get
22 him straight, Judge. That's all they have is each other.
23 There is not one single scintilla of evidence that suggests
24 that she is a flight risk here.

25 THE COURT: All right. I am going to set a voluntary

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1 surrender date. I agree that she is has been compliant
2 throughout on pretrial release at all times. She was well
3 aware of the guidelines range, and I gave a sentence of course
4 within that range, and she does have her son who will be
5 attending school in the United States. And if she were to
6 flee -- and consider this a warning, Ms. Bahadorifar, you will
7 be arrested immediately, and then she won't be seeing her son
8 again for a very long time.

9 Ms. Cavale, could you choose a date approximately 90
10 days out.

11 THE DEPUTY CLERK: How is July 7 at 11 a.m.?

12 MR. LICHTMAN: Thank you.

13 THE COURT: On that date she shall surrender to the
14 institution designated by the Bureau of Prisons or as notified
15 by the probation or Pretrial Services.

16 Ms. Bahadorifar, the conditions of your release will
17 continue up until the time that you report for sentence. If
18 you fail to report for sentence. Not only will you be
19 arrested on a bench warrant, but you will likely be charged
20 with a separate crime of bail jumping. So I want to make that
21 very, very clear.

22 That is the sentence of this Court.

23 Ms. Bahadorifar, you have a right to appeal your
24 conviction and sentence except to whatever extent you may have
25 validly waived that right as part of your plea agreement. If

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1 you do choose to appeal, the notice of appeal must be filed
2 within 14 days of the judgment of conviction.

3 If you are not able to pay for the cost of an appeal,
4 you may apply for leave to appeal *in forma pauperis* which
5 simply means that court costs, such as filing fees, will be
6 waived.

7 If you request, the Clerk of Court will prepare and
8 file a notice of appeal on your behalf.

9 Is the government moving to dismiss the open counts?

10 MR. GUTWILLIG: Yes, your Honor.

11 THE COURT: All right. They will be dismissed.

12 Are there any other applications?

13 MR. LICHTMAN: Judge, I would ask for a
14 recommendation for a prison camp in central California.

15 THE COURT: All right. I will make that
16 recommendation. It's ultimately, of course, up to the Bureau
17 of Prisons, but I will make that representation --
18 recommendation.

19 MR. LICHTMAN: Thank you.

20 THE COURT: Are there any other applications at this
21 time?

22 MR. LICHTMAN: Nothing from the defense.

23 MR. GUTWILLIG: Not from the government, your Honor.

24 THE COURT: Thank you. We are adjourned.

25 oOo